

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: April 29, 2016

Opposition No. 91196299 (parent)

Connect Public Relations, Inc.

v.

DigitalMojo, Inc.

Cancellation No. 92054395

Cancellation No. 92054427

DigitalMojo, Inc.

v.

Connect Public Relations, Inc.

Geoffrey M. McNutt, Interlocutory Attorney:

On April 28, 2016, at 3:30 p.m. EDT, the parties conducted a teleconference before the Board to resolve Digitalmojo, Inc.'s, March 12, 2015¹, fully-briefed motion to compel Connect Public Relations, Inc.'s, responses to certain sets of interrogatories and requests for admission, or, alternatively, to reopen the discovery period and allow

¹ Following the filing of the motion to compel, Connect filed the parties' stipulated motion to suspend proceedings for settlement purposes. *See* 44 TTABVUE. Accordingly, the Board, in its May 22, 2015, order granting the parties' suspension request, also suspended the time for further briefing on Digitalmojo's motion to compel. *See* 45 TTABVUE. After the suspension period expired, the Board reset the time for further briefing on Digitalmojo's motion. *See* 46 TTABVUE.

Digitalmojo to re-serve the sets of interrogatories and requests for admission at issue in the motion.

Thomas Cook appeared as counsel for Digitalmojo and Karl Cannon and Ryan Gillan appeared as counsel for Connect. Interlocutory Attorney Geoffrey McNutt conducted the conference on behalf of the Board.

In the motion, Digitalmojo sought a Board compelling Connect to respond to the interrogatories and requests for admission² that it had propounded to Connect between March 12, 2014, and March 13, 2014. The interrogatories and requests for admission were served by Digitalmojo as petitioner in the cancellation proceeding, and were styled Petitioner's Interrogatories, Set One; Petitioner's Interrogatories, Set Two; Petitioner's Requests for Admissions, Set One; and Petitioner's Requests for Admissions, Set Two (collectively the "2014 Requests"). The 2014 Requests were served by Digitalmojo after the cancellation proceeding had been consolidated with the opposition proceeding, and after Digitalmojo had already served multiple sets of interrogatories and requests for admission in the opposition proceeding.

During the parties' conference before the Board regarding the motion, Digitalmojo agreed to withdraw the 2014 Requests that were the subject of its motion. In view of Digitalmojo's withdrawal of the 2014 Requests, Digitalmojo's motion to compel and alternative motion to reopen the discovery period for purposes of reserving the 2014 Requests are **denied without prejudice** as moot.

² Digitalmojo is advised that if a propounding party is dissatisfied with a responding party's answer or objection to a request for admission, and wishes to obtain a ruling on the sufficiency thereof, the appropriate motion is a motion to test the sufficiency of the response. *See* Fed. R. Civ. P. 36(a)(6), Trademark Rule 2.120(h)(2), TBMP § 524.

The discovery period remains closed. The parties are reminded that they have an ongoing duty to supplement or correct their responses to discovery requests previously served and answered in these consolidated proceedings, as necessary. *See* Fed. R. Civ. P. 26(e). Further, each party and its attorney has a duty to make a good faith effort to satisfy the legitimate discovery needs of its adversary. *See* TBMP § 408.01. To this end, the parties are reminded that these consolidated proceedings now involve Connect's pleaded claim of likelihood of confusion and Digitalmojo's petition for cancellation of one of Connect's pleaded registrations (Registration No. 2366850) on the ground of abandonment. The parties' cooperation and duty supplement prior discovery responses should take into account the operative pleadings and the Board's February 27, 2015, summary judgment order.³

In the event that any future disagreements arise regarding the sufficiency of either party's responses to previously served discovery requests or requests for admission, the parties are required to meet and confer in good faith in an attempt to resolve or narrow any disagreements prior to filing a motion seeking Board intervention. *See* Trademark Rule 2.120(e)(1) and (h). To this end, in connection with any such discussions the parties should review TBMP §§ 406.04(c) (nature of responses to requests for documents), 407.03(b) (nature of responses to requests for

³ Digitalmojo also filed a separate petition for cancellation of Connect's pleaded Registration No. 2373504 on the grounds of abandonment (Cancellation No. 92054427). However, after the cases were consolidated, the Board granted Connect's motion for summary judgment on the abandonment claim with respect to that registration and dismissed Cancellation No. 92054427. *See* 41 TTABVUE 10–11, 13, 20. The Board also granted Connect's motion for summary judgment on its likelihood of confusion claim with respect to International Class 35 of Digitalmojo's subject application. *See* 41 TTABVUE 19–20.

admission), 408 (duties to cooperate, search records, and supplement), and 414 (selected discovery guidelines).

Proceedings are resumed and remaining trial dates are reset as follows.⁴

Discovery Period	CLOSED
Connect's 30-day testimony period as plaintiff in the opposition to close:	July 16, 2016
Digitalmojo's pretrial disclosures due:	July 31, 2016
Digitalmojo's 30-day testimony period as defendant in the opposition and as plaintiff in the counterclaim to close:	September 14, 2016
Connect's pretrial disclosures for rebuttal in the opposition and as defendant in the cancellation due:	September 29, 2016
Connect's 30-day testimony period as defendant in the cancellation and as plaintiff in the opposition to close:	November 13, 2016
Digitalmojo's rebuttal disclosures as plaintiff in the cancellation due:	November 28, 2016
Digitalmojo's 15-day rebuttal testimony period as plaintiff in the cancellation to close:	December 28, 2016
Brief for Connect as plaintiff in the opposition due:	February 26, 2017
Brief for Digitalmojo as defendant in the opposition and plaintiff in the cancellation due:	March 28, 2017

⁴ Connect's pretrial disclosures were due previously. The Board presumes that Connect served those pretrial disclosures. Connect is reminded that it has an ongoing duty to supplement and/or correct the pretrial disclosures in a timely manner, as needed. *See Fed. R. Civ. P. 26(e)*.

Opposition No. 91196299 (parent) and Cancellation Nos. 92054395 and 92054427

Brief for Connect as defendant in the
cancellation and reply brief, if any, as plaintiff in
the opposition due:

April 27, 2017

Reply brief, if any, for Digitalmojo as plaintiff in
the cancellation due:

May 12, 2017

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.